

1 Law Office of Jeffrey S. Niesen
Jeffrey S. Niesen
2 1411 W. Pinehill Road
Spokane, Washington 99218
3 Tel: 509 467-8306
Facsimile: 509-467-9205
4

5 Counsel for Defendant
ISSAC SHANE SPRAUER
6

7 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
8

9
10 UNITED STATES OF AMERICA

Case No. CR 07-024 –WFN

11 Plaintiff,

12 vs.
13

**DEFENDANT’S SENTENCING
MEMORANDUM**

14 ISSAC SHANE SPRAUER

15 Defendant.
16

_____/

17 Comes now defendant ISSAC SHANE SPRAUER, by and through his attorney
Jeffrey S. Niesen, to present for the Court’s consideration the Defendant’s sentencing
18 Memorandum.
19

20 **Introduction**

21 Mr. Sprauer is before the court for a re-sentencing as mandated by the Ninth Circuit
22 Court of Appeals arising from his plea of guilty to being a felon in possession of ammunition, a
23 violation of 18 U.S.C. § 922(g)(1), a Class C felony.
24

25 **Criteria for Sentencing**

26
27 With the Supreme Court’s decision in *United States v. Booker* and *United States v.*
28 *Fanfan*, 125 S. Ct. 738 (2005), the landscape for sentencing a federal criminal defendant

1 changed. Whereas previously in fashioning a sentence the Court was bound by the mandatory
 2 provisions of the Federal Sentencing Guidelines, the *Booker* and *Fanfan* decisions made it clear
 3 that the Guidelines were advisory only. While the guidelines were to be considered and given
 4 weight, it was just one of a number of factors the Court was to consider in deciding an
 5 appropriate sentence in accordance with 18 U.S.C. 3553. The ultimate test taking all of the facts
 6 and circumstances into account is whether the sentence imposed is reasonable.

7 In *United States v. Carty*, 520 F.3d 984 (*en banc*) (9th Cir 2008), the Ninth Circuit
 8 reviewed the three *post-Booker* Supreme Court opinions in order to clarify the requirements for
 9 the district court's determination of a "reasonable sentence" within the circuit. The *Carty* court
 10 echoed the Supreme Court's dictate that "[a]ll sentencing proceedings are to begin by
 11 determining the applicable Guideline range." *Id.* 991. The other factors being those criteria set
 12 forth in 18 U.S.C. Sec. 3553(a). The overarching statutory goal is for the district court to
 13 "impose a sentence sufficient, but not greater than necessary" to reflect the seriousness of the
 14 offense, promote respect for the law, provide just punishment, afford adequate deterrence,
 15 protect the public and provide the defendant with training, medical care and correctional
 16 treatment. *Id.*

17
 18 The sentencing court is also directed to consider the nature and circumstances of the
 19 offense, the history and characteristics of the defendant, the types of sentences available,
 20 unwarranted sentencing disparities, and the need to provide restitution to the victims of the
 21 offence. *Id.*

22 / **The Presentence Investigation Report**

23
 24 On January 8, 2010, the Probation officer filed a revised Presentence Investigation
 25 Report (PSR) which was revised in accordance with the Mandate of the Ninth Circuit Court of
 26 Appeals. The Presentence report has been reviewed and discussed with the defendant. The
 27 defendant has no objections to the report except as follows:
 28

1 In paragraph 127 and 195, there is mention of defendant's affiliation with a gang. That
 2 matter was discussed with the Court in the Sentencing Hearing which occurred on February 5,
 3 2009. At that hearing the Court ordered that the final PSR was to be altered to reflect that Mr.
 4 Spauer denies any affiliation with the East Piru Gang¹. Suffice it to say that in neither paragraph
 5 127 nor 195 has this alternation been made. Due to the highly detrimental impact of a
 6 conclusion of gang membership or affiliation in the PSR, it is requested that the statement
 7 appearing in the PSR be amended as ordered by the Court.

8 In the second paragraph of Part A 5, several statements are made regarding disciplinary
 9 proceedings. It should be noted that the first of those proceedings took place before the first
 10 sentencing. Mr. Sprauer also reports he has no knowledge of ever declining drug education on
 11 November 5, 2009. As reflected in the numerous programs he has participated in, it is his intent
 12 to participate in every available training opportunity.

13 14 **A Reasonable Sentence for Mr. Sprauer**

15 This memorandum is to serve as an adjunct to the sentencing memorandum filed on
 16 behalf of Mr. Sprauer by prior defense counsel (Document 34 filed 10/10/2007 under seal) which
 17 is incorporated herein by reference. In that sentencing memorandum the defense detailed the
 18 reasons why Mr. Sprauer is deserves consideration and mitigation from the Court. Those reasons
 19 need not be repeated here. It is enough to note that those reasons remain valid and should be
 20 taken into account by the Court in fashioning a revised sentence for the defendant.

21
 22 At the original sentencing hearing the defendant requested the opportunity to participate
 23 in therapy and training while incarcerated. The Court applauded that attitude and encouraged
 24 Mr. Sprauer to seek out and seize every available opportunity afforded by the BOP. Mr. Sprauer
 25 has taken that advice to heart and he reports that since his incarceration he has participated in and
 26 completed various courses that were made available. He is continuing his studies to acquire his

27
 28 ¹ "THE COURT: You know, on that reference to the gang Miss Petrettie, it might be appropriate if we just add the
 sentence that the -- what Mr. Sprauer said, that he denies any affiliation with the gang." (pg 14, line 8-11, Sent.
 Transcript hearing dated February 5, 2009)

1 GED and, as of this writing , has just one more test to complete his studies. Thereafter, he
2 intends to continue his education with the goal of working towards and acquiring a college
3 degree.

4 Mr. Sprauer realizes that he has been given the opportunity to make a sea change in his
5 life. He recognizes that his involvement with drugs was a mistake, and that the persons who
6 provided drugs were not his friends but instead were taking advantage of him and using him for
7 their own purposes and profit. He realizes that going forward he will have the opportunity to
8 excel and prove that he can be a contributing citizen of our Country. He also knows that this is
9 possibly his last chance to “get with the program” and that any further interaction with the
10 policing authorities will probably result in the destruction of his dreams and lengthy
11 incarceration.

12
13 Mr. Sprauer is finally growing up. He more self-control has a focus on the future. A
14 future he knows only he can make bright and joyful. He is committed to making that happen.
15 This growing maturity is reflected by the fact that even in jail he was given positions of
16 responsibility. Be it working in the kitchen or as a unit orderly, persons in authority working
17 with him on a daily basis have recognized his hard work and reliability.

18 The revised PSR indicates that the corrected guideline range for Mr. Sprauer arising from
19 an offense level of 17 with a category VI criminal history is from 51 to 63 months of
20 incarceration. Based on the unique circumstances of the defendant, his determined on-going
21 efforts to educate and improve himself and his apparent growth in maturity, it is appropriate for
22 the Court in deference to the sentencing standards set forth in 18 USC Sec. 3553, to sentence the
23 defendant at no more than the low end of the sentencing guideline, that is, 51 months of
24 incarceration. Such a sentence is not only factually justified but will represent the Court’s
25 tangible recognition and encouragement of the progress being made by Mr. Sprauer.

26
27 Mr. Sprauer is subject to a term of supervised release of either 2 or 3 years. It is his hope
28 that for whatever term the Court deems appropriate, he be provided with the support and

1 opportunity for further treatment and training. He requests that the Court again recommend to
2 the Bureau of Prisons that he be considered for the 500 hour drug program.

3 Due to his continued financial embarrassment, any fine imposed would be inappropriate
4 and counterproductive. Therefore, it is recommended that no fine be imposed.

5
6 Although advisory, Mr. Sprauer asks that the Court recommend that he be incarcerated as
7 close to Spokane as reasonably possible and that he be given full credit for all of the time he has
8 been in federal custody.

9 Dated: March 23, 2010

Respectfully Submitted,

12 Law Office of Jeffrey S. Niesen

13 s/Jeffrey S. Niesen for

14 Issac Shane Sprauer

16 Certificate of Service

17
18 I hereby certify that on March 23, 2010, I electronically filed the foregoing with the Clerk of the
19 Court using the CM/ECF System which will send notification of such filing to the following:

20 AUSA Ainuddin Anmed, Counsel for the United States of America.

21 s/Jeffrey S. Niesen (33850),

22 Law Office of Jeffrey S. Niesen

23 1411 W. Pinehill Rd. Spokane WA, 99218

24 509-467-8306; Fax: 509-467-9205

25 jsniesen1@yahoo.com